FILE COPY

Office-Supreme Court, U.S.
FILED
APR 13 1959
JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1958

Nos. 831

FORD MOTOR COMPANY,
Defendant and Appellant,

vs.

ALEXANDER PARK, ET AL.,
Plaintiffs and Appellees,

THOMAS M. KAVANAGH, Attorney General,
Intervenor and Appellee,

THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees.

FORD MOTOR COMPANY,
Defendant and Appellant,

vs.

JOHN L. DORSEY, ET AL.,
Plaintiffs and Appellees,

THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

APPENDIX TO JURISDICTIONAL STATEMENT

APPENDIX TO JURISDICTIONAL STATEMENT

INDEX

	PAGE
Decision of Appeal Board	1a
Dissenting Opinion	24a
Portion of Ford Motor Company's Brief in State Supreme Court Dealing With Federal Questions	29a
Application of Ford Motor Company for Rehearing	38a
Objections of Plaintiffs to Application for Rehearing	57a
Order Denying Application For Rehearing	59a
Stay of Remittitur by State Supreme Court	60a
Notice of Appeal	61a

DECISION OF APPEAL BOARD

(Filed April 5, 1955)

This matter is before the Appeal Board upon appeal by approximately 5700 claimants employed by the Ford Motor Company from a Decision of the Referee dated August 16, 1954, in which the Referee affirmed the redeterminations made by the Commission on October 22, 1953, in which Decision the Referee held that each of the claimants was disqualified for benefits during their respective un-

employment in the weeks ending May 16, 23, and 30, 1953, under the provisions of Section 29 (1)(b) of the Michigan Employment Security Act.

The redeterminations made by the Commission held that the unemployment of the claimants in the weeks above stated was due to a stoppage of work in their plants or departments in Michigan caused by a work stoppage in the Canton, Ohio Forge Plant of the Ford Motor Company, where the work stoppage was due to a labor dispute then in progress there. The Commission considered the Michigan and Ohio Plants of the Ford Motor Company to be parts or units of a single establishment and therefore found each of the claimants directly involved in said labor dispute and disqualified the claimants from receipt of benefits for the period of their unemployment during said weeks under the labor dispute provision of Section 29 (1)(b)(4) of the Michigan Employment Security Act.

The issues in this case are whether the unemployment of the claimants was due to a stoppage of work for any week with respect to which their total or partial unemployment was due to a stoppage of work existing because of a labor dispute in the establishment in which they were last employed, and whether they were directly interested in the labor dispute which caused their stoppage of work.

It is the contention of the claimants that because a strike occurred in the Canton, Ohio Plant, the Michigan law does not have extra territorial effect and cannot operate beyond the state line, thereby depriving claimants of benefits under the Act; that the Canton Plant is a separate establishment within the meaning of the Act and that whatever transpired in the Canton strike, and the negotiations resulting therefrom, would have no effect upon the benefit rights of the claimants in Michigan.

Decision of Appeal Board

The employer, on the other hand, contends that the Canton Plant was and is a part of the Ford enterprise and that there was close integration and synchronization between that plant and the units in the Detroit area; that the units in the Detroit area depended upon a continuous flow of parts and material produced at the Canton plant in the manufacture of its product, namely cars, trucks and tractors; that there had been pending for upwards of two years prior to the Canton strike, negotiations on the part of the International Union U.A.W.-C.I.O. growing out of grievances and demands made by other locals in plants situated in other parts of the country, including Michigan, and that as a result of the long standing negotiations a supplemental contract was entered into between the International Union and Ford Motor Company on May 25, 1953, which finally resolved the differences and benefited the employees not only in the Canton Plant but in all units wherever situated, of the Ford Motor Company; that owing to the functional integration and the strike which occurred in the Canton Plant, it became necessary to close certain units in the Detroit area causing the lay-off of the Claimants and that, being one establishment, claimants are disqualified from receiving benefits under the labor dispute provisions of the Michigan Employment Security Act, and, further, that they were directly interested in the labor dispute.

The facts in this case have been thoroughly considered and reviewed by the Referee in his Decision and we deem it neither advisable nor necessary to again set forth the facts in detail except for certain pertinent facts which will be set out in the reasons and conclusions which we have reached. The pertinent provisions of the Act governing this case are contained in Section 29(1)(b) and subsections 1, 2, 3 and 4 thereof, which read as follows:

"Sec. 29. (1) An individual shall be disqualified for benefits:

* * *

(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, However, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute unless it is established:

(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, However, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, or

(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the

employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed.

* * *"

The issues have been thoroughly argued by competent counsel representing the respective parties, Zwerdling & Zwerdling appearing for the claimants, Joseph A. O'Reilly and Richard A. Fellrath appearing for the Ford Motor Company, Garfield Geddis appearing for the Commission, Frank E. Cooper, Amicus Curiæ, representing the Michigan Employers' Unemployment Compensation Bureau, and Leonard Meldman, Amicus Curiæ, appearing for the Michigan Federation of Labor. Counsel have also filed with the Board extensive and comprehensive briefs and reply briefs which, together with a brief filed by the Attorney General, have been very helpful and have been considered by the Board.

The record clearly indicates that there was a labor dispute between the International Union U.A.W.-C.I.O. and the Ford Motor Company. It had its origin in the Canton Plant but it did not totally remain there. Soon after the Canton grievances were brought to light, which were local in character, many other demands, industry-wide, were made by the International upon the Company. Grievances were presented in behalf of locals in many other cities in which the Company has plants. Negotiations continued for many weeks until all differences were settled, which re-

sulted in the signing of a supplemental contract on May 25, 1953, and a separate contract adjusting the Canton issues. The supplemental contract was signed in behalf of the International Union by Walter Reuther and many other officials of the Union, and in behalf of the Ford Motor Company by John S. Bugas and other officers of the Company. The contract adjusted many differences set forth in the master contract of 1950 relating to (1) Transfer of Portion of Cost of Living Allowance to Base; (2) Revised Cost of Living Allowance; (3) Increase in Annual Improvement Factor; (4) Skilled Rate Increase; (5) Vacation for Retiring Employees; (6) Hospital, Surgical and Medical Care; (7) Blue Cross Coverage for Retirees; (8) Increased Retirement Benefits, and certain other benefits relative thereto. This agreement affected all employees of the company wherever located; all employees benefited by the negotiations, not only locally but country-wide. The Union kept its members fully advised as to the progress of the dispute through its publication "FORD FACTS". After the strike was called in the Canton Plant on April 20, 1953, the Union continued to keep its members posted on its progress through its publication and on May 9, 1953, warned its members of possible lay-offs due to a shortage of parts and material produced at the Canton Plant. We quote the letter written by Ken Bannon, Director of National Ford Dept. International Union, U.A.W.-C.I.O., to its members, published on the above date in "FORD FACTS":

"Dear Sirs and Brothers:

On April 24, you were advised of the dispute and the issues that led to strike action in the Canton, Ohio plant of the Ford Motor Company. This

letter will bring you up to date on the happenings in this dispute.

Meetings have been held daily with the company, with representatives of the Regional Office and the National Ford Department assisting the Local Union Committee. In all of these meetings, the company has refused to put together a satisfactory agreement that would end the strike.

On Sunday, May 3, a membership meeting was held in Canton. At this meeting, a full report was given to the membership on everything that has taken place in our negotiations. The membership in a very enthusiastic manner commended the negotiators and by its actions demonstrated a solid front against the Company.

In our winning the issue in dispute, the Company's program of combining classifications in the Canton Plant will suffer a severe set-back, because when the Company must pay a higher rate of pay for the added responsibility that comes as a result of two classifications being combined, then its incentive will be destroyed. It is on this principal that the membership in Canton is making an all-out fight. The dispute in its present stage involves a comparatively few workers, but once the principle is established, all of the workers will be protected.

The Canton Plant produces most of the forgings, such as axles, spindles, sectors for steering, and many other items for the Company. Therefore, there is a strong possibility that your plant will be shut down in the immediate future as a result of the shortage of material caused by the strike. When this occurs, it is important that you notify the membership to file for Unemployment Compensation benefits. You will recall that in the strike of May, 1949 our members in practically all states were ruled eligible for Unemployment Compensation benefits.

I shall continue to keep you posted on the progress that is made in this strike. With every best wish, I remain

Fraternally yours,

Ken Bannon, Director National
Ford Department International
Union, UAW-CIO"

Thus the Union recognized that the Canton Plant produced parts and materials essential to the manufacture of the Company's product and that upon cessation of production other plants would, of necessity, have to close down. Regarding the necessity of a continued flow of axles, spindles, steering parts, and other items produced at Canton, volumes of testimony and evidence was introduced. Graphs, charts, diagrams, letters, telegrams, compilations, computations, and a great amount of testimony was offered by heads of various departments or units in the plants affected in the Detroit area to show the impossibility of continued operation without a continuous flow of the vital parts from the Canton Plant. In all, over 3000 pages of testimony was taken and 109 exhibits introduced. It would be physically impossible to here digest the testimony of the many witnesses or to quote at length from the many exhibits. Summarized, however, it may be said that the evidence all points to a close integration and synchronization of parts produced by the many units of the Company and the dependence of one unit upon another for the finished product, and that a strike in the Canton plant would, of necessity, close the plants in the Detroit area.

The Union recognized this fact. In its official publication "FORD FACTS", of May 23, 1953, the front page story carries this headline, "Canton Strike Causes Mass

Lay-Offs". With respect to the right of claimants to benefits the position taken by the Union is clearly stated in two paragraphs of the article which read:

> "If, unfortunately, you do not have sufficient seniority to hold a job in the plant, you should, in order that your rights are not jeopardized, immediately apply for unemployment compensation benefits. The Ford Motor Company may protest your benefit rights, but Local 600 will contest any such protest, because the International Union concurs with the Local Union's interpretation of the Michigan Employment Security Act that—
>
> EMPLOYEES LAID OFF IN THE STATE OF MICHIGAN BECAUSE OF A LACK OF WORK DUE TO A LABOR DISPUTE IN ANOTHER STATE ARE ENTITLED TO UNEMPLOYMENT COMPENSATION BENEFITS."

This is one of the basic questions in this case. Stated in the language of the Act, was the unemployment of these claimants during the period involved due to a stoppage of work existing because of a labor dispute in the establishment in which he was last employed? We shall discuss this question first.

The Company has from the outset strongly maintained that due to the closely knitted and functional operation of its various units, it is one establishment within the meaning of the Act.

Much argument and many citations of authority have been presented on behalf of claimants to show that the Michigan Act can have no extra territorial effect on a strike which, although occurring in another state, causes the shut down of plants in this state. Most of the decisions from other jurisdictions cited in the briefs of counsel and

stressed in argument, were considered and passed upon by the Referee. The Board has duly considered them. It seems to us however, that the answer to this question is found in the law of our own state. The legislature nowhere in the Act refers to a strike. It speaks in terms of "a labor dispute in the establishment".

We do not believe that distance, state lines, or extra territoriality are the predominant barriers to decision. Michigan is not trying to legislate upon the rights of the Canton workers to benefits. Nor do we believe that mere distance alone is a determining factor. This was no obstacle in the Ormiston case where a distance of 600 miles separated the Rouge Plant from the Iron Mountain Plant.

We believe that the basic issue is one of functional integration.

Except for the fact that a state line is involved in this case we can see no distinction whatever between the facts existing here and the facts in *Chrysler Corporation* v. *Calvin N. Smith, et al,* 297 Mich. 438. It is true that in the Chrysler case the Supreme Court was not called upon to decide whether the unemployment of the claimants there resulted from a labor dispute existing in another unit of Chrysler Corporation located in another State. There were many units of the Corporation within the State of Michigan, and particularly in the Detroit area, which were forced to close down due to the strike in the Dodge Main Plant. The question of functional integration was the paramount question in that case, and we believe upon this branch of the case it is the paramount question here.

The Court was there called upon to decide whether or not all of the units of Chrysler Corporation involved in the shut down was one establishment in order to determine whether or not all of the Chrysler Corporation employees in the various plants would be disqualified. The Court also

was called upon to decide whether, under the negotiations with the International Union, all of the claimants affected by the shut down were directly interested in the outcome of the strike and entitled to benefits. The Court stated the question to be:

> "The main question is whether, under the legislative employment of the term 'establishment' in Section 29(d) of the act, the units constituting the work production system set up by the corporation, should be held separate 'establishments' or, as a whole, an 'establishment'. An 'establishment', under the simplest definition and common sense understanding, is merely something established. The purpose and use of the creation, if to accomplish an end in which all units are participants in bringing it about, constitutes the units, so synchronized and employed by the Chrysler Corporation in accomplishment of a common end, an 'establishment' within the meaning of the term as employed in the act."

The Court then cited and considered the case of *Spielman* v. *Industrial Commission, et al*, 236 Wis. 240 (295 N. W. 1), wherein a labor dispute occurred in the Milwaukee plant and the employees of the Kenosha plant, on account of a labor dispute, went on strike and that resulted in shutting down both plants. The Wisconsin Supreme Court held:

> "That although the two plants were forty miles apart, they were just as much a single establishment for the manufacture of automobiles as they would have been had they been in two buildings adjacent to each other."

and that the two plants located in Milwaukee and Kenosha constituted an "establishment" within the meaning of the Wisconsin statute, which is, in effect and import, the same as the Michigan Act. The Court further said:

Decision of Appeal Board

> "The labor dispute involved new contract provisions in which claimants were directly interested, and the stoppage of work and the calling of a strike in the main plant were well calculated to bring about a new contract of employment of direct interest to all claimants."

Further, the Court said:

> "In the case at bar, under the election ordered by the National Labor Relations Board the UAW-CIO became the sole bargaining agent for every plant division of the Chrysler Corporation and, as such, its activities in the labor dispute directly involved claimants and their interest."

After holding that the claimants were directly interested in the outcome of the dispute and were directly involved, the Court held:

> "We hold that the Dodge Main Plant and the mentioned synchronized units constitute one 'establishment' within the meaning of that term as employed in the act, and claimants are disqualified from unemployment compensation by reason of the fact that their claims are based upon unemployment during a period in which a labor dispute, in which they were directly involved was in active progress, caused stoppage of operations in the establishment where they were employed."

On December 13, 1951, Hon. Glenn W. Jackson, Circuit Judge of Dickinson County, handed down a decision in the case of Walter Ormiston, et al, vs. Appeal Board of the Michigan Unemployment Compensation Commission, et al, in which he affirmed the Decision of the Appeal Board holding that the claimants therein were disqualified from receiving benefits under facts similar to the case at bar. In the Ormiston case a strike was called at the Rouge and

Lincoln Plants of the Ford Motor Company growing out of certain grievances. It was shown that certain parts and material produced at the Rouge Plant were necessary in the production process at the Iron Mountain Plant, 600 miles away. This caused a shutdown of the Iron Mountain Plant whereupon many, if not most of the employees filed claims for unemployment benefits. Judge Jackson discussed the Chrysler case at some length, which was held by him to be controlling. The Court said:

> "If this holding should be changed or modified in any way, as claimed by the appellants, their remedy is in the Supreme Court and not in this Court. This inferior Court is in no position to attempt to overrule the Supreme Court, to follow a dissenting opinion, or the opinion of Courts of other states, which conflict with the decisions of our Supreme Court, no matter how persuasive their opinions might be."

The Court further said:

> "The Legislature of Michigan cannot project its legislation beyond the boundaries of the State and the Supreme Court of this State, likewise, cannot project its rulings beyond State boundaries. The Legislative Acts and Supreme Court decisions of other States have no effect within Michigan. If the outside decisions would seem to indicate any need for any change or modifications of our decisions, that is solely a matter for our Supreme Court to consider.
>
> "This Court has no other alternative than to hold that the Iron Mountain Plant was a part of the same establishment as the Rouge and Lincoln plants."

The Court further considered and relied upon *General Motors Corp.* v. *U.C.C.*, 321 Mich. 724, in which the Supreme Court held that all of the employees of an estab-

lishment are "directly involved" in every labor dispute in the establishment, as a matter of law. Amplifying the foregoing Judge Jackson said:

> "In other words, this is a legislative declaration that all employees are directly involved in a labor dispute, causing a stoppage of work, irrespective as to whether or not they may have any direct interest in the subject matter of the dispute in another plant."

From the foregoing it is our opinion, and we so find, that the unemployment of the claimants in the case at bar was due to and grew out of a stoppage of work existing because of a labor dispute in the establishment in which they were last employed, and that all of the units of the Ford Motor Company, both in Michigan and Ohio, constituted one establishment within the meaning of that word as contained in the Michigan Act.

WERE THE CLAIMANTS DIRECTLY INTERESTED IN THE LABOR DISPUTE?

A careful reading of the record shows that the labor dispute in this case was not a purely local affair. Numerous grievances and demands had been made upon the Company as far back as 1951 and 1952 which had not been resolved to the satisfaction of the Union. Correspondence between the International Union UAW-CIO and the Ford Motor Company shows repeated demands made by locals in plants located in many states. The International appears to operate in a closely knitted, integrated manner with its locals and its modus operandi is to negotiate for them on a national as well as local scale. While it may be said that the grievances existing at the Canton plant precipitated the closing of the plants in the Detroit area, negotiations had developed to a serious point on issues which not only affected

the workers there but in all other units of the company as well.

The record shows that while the contract of 1950 would not expire until June 1, 1955, the Union had belabored the Company to reopen it for modifications respecting demands relating to pensions, cost of living increases, and other issues appearing in the Supplemental Contract of May 25, 1953. The record points to a strong indication that these demands were the paramount issues and that the demands at the Canton Plant were subordinate in point of importance. A great amount of testimony was taken and evidence submitted in support thereof. Only a fractional portion of the hundreds of pages of testimony can be quoted upon this branch of the case.

The witness Cummings, Assistant to the Manager of Labor Relations, testified that these demands started on September 30, 1952, at a meeting with the Union Negotiating Committee followed by a meeting next day at a local hotel. He stated:

> "The demands all had to do with the union's stated position that contracts were not static, legalistic documents but on the contrary were living, breathing things and that they had asked that we reopen our contract in advance of the date for reopening, which was 1955, and that we grant certain concessions to the union. They wanted our pension plan changed; they wanted the so-called cost of living allowance frozen into the base rates; they wanted the improvement factor increased from four to five cents per hour; they wanted to change our hospitalization on the West Coast, adopt permanents."

At a meeting on March 17, 1953 with Mr. Bannon of the International Negotiating Committee, the latter re-

ferred to the three prior meetings held at the Union's request to reopen the contract:

> "Mr. Bannon stated that the only type of bargaining that we understood was crisis bargaining, that we were never in a position to make any concessions to the union unless a crisis was developing in one of our plants. He suggested that that probably would be the way to bring us to terms, to create a crisis. I recall that Bannon stated definitely that if it was necessary to do that, he would do it."
>
> * * *
>
> "Mr. Prato, who was present at that time, said that the only way they could get anything out of Ford was to push and squeeze them."

He also referred to Mr. Galvin, of Chicago, a member of the Committee, who informed him "that the people were not going to hold still for this thing for long and that they could cause us plenty of trouble within the framework of the contract. * * * We started having strikes in our key plants. They started a strike at our Monroe Plant which was the first one."

On April 8, 1953, in response to a call from Bannon, the witness met with him and Prato.

> "At that time Bannon told me that if we would make a concession on the social security aspect of our pension plan that we would settle the Monroe strike and that the Canton strike, which was already threatened by virtue of the letter of April 2, would not come off. He said that if we saw fit to make this concession that he would then have his people act as firemen in putting out fires rather than in building fires.
>
> * * *

Decision of Appeal Board

"I had further discussion on May 12, May 13 and May 14, at which time the Canton strike was in progress, at which time definite proposals were made that if we would make concessions on the union's other demands that we would settle the Canton strike.

* * *

"He stated in substance, as I have outlined before, he said it would be necessary that we make some movement on the social security aspect of the pension plan here, in order to settle the Canton strike; that we would have to beat General Motors' offer on freezing the costs of living into the base rates. General Motors at that time had offered to freeze 14 cents an hour in. The other demands of the union were outlined. There was the increase in the improvement factor. We also had the problem of transferring from the old to the new BLS cost of living index.

* * *

"He told me that even if we settled the Canton strike without moving on this other thing, that Mound Road was the next on the timetable.

* * *

"We told them that we were willing to discuss contract changes, that we had been wanting to do it for some time, but that we could not do it as long as the Canton strike was in progress; that we must insist that the Canton strike be settled before we would sit down and have any meetings on the big package, or the amendment of the master contract. * * * The term 'big package' was used pretty generally to denote the major concessions that the union was requesting in the way of amending the contract, all of the various items that they had been pressing for."

Following the negotiations which had continued for a long period of time, the parties finally met at a hotel in the City of Detroit. A committee representing the Canton workers and a committee representing the Ford Motor Company met in one room for the purpose of concluding a contract with respect to the Canton grievances; another committee of the International Union and a committee representing the Ford Motor Company met in another room for the purpose of concluding the amendments to the master contract. The Company insisted, however, that the Canton grievances be settled first and that that contract be executed prior to the execution of any contract settling the grievances of the master contract. The upshot of these meetings was that the Canton contract was signed some few hours preceding the execution of the supplemental contract of May 25, 1953.

At the hearing of January 28, 1954, the witness Manton M. Cummings further testified:

> "At a meeting on April 8, which I have previously mentioned, and during the time the Monroe strike was in progress, I had conversation with Mr. Bannon, at which time he asked that the company move on the social security aspect of our pension plan which, in substance, would increase benefit payments to certain retirees. At that time Mr. Bannon advised me that if we saw fit to move, we could settle the Monroe strike; that the Canton strike, which we had received a letter concerning, would not take place, and that we could settle the wage rates at Cleveland, negotiations on which had been in progress prior to this time.
>
> * * *
>
> "I met him later that day and we talked about the strike situation at Canton, and ways and means of settling that dispute. Then I made the statement that

I assumed that if we settled Canton without settling on the big package, that we would probably have a strike at the Cleveland Engine plant and probably at the Buffalo Stamping plant, and Mr. Bannon advised me that that was not the correct timetable, that the order of proceeding was that we would strike at the Cleveland Engine plant and then at Mound Road; that the Buffalo Stamping plant would not be struck at this time because the union had not been in that plant long enough to make an independent determination of their ability to support a strike at the Buffalo Stamping plant, another key plant.

* * *

"We had the Canton strike in progress. We were curtailing our operations. Many of them had been curtailed. We were convinced that the Canton strike was a part of the pressure to get us to move on the big package. The price that we had to pay to settle the Canton strike if we did not move on the big package was prohibitive, and we just determined that if we were going to move on the big package that we had to get the Canton situation out of the road because if we failed to do that, we would be no better off after having made our concessions on the big package than we were before."

At the same hearing at which the testimony of Mr. Cummings appears above, Mr. Robert S. Dunham, Assistant Industrial Relations Manager of the Ford Motor Company gave testimony respecting a meeting with the U.A.W.-C.I.O. National Negotiating Committee on or about March 17, 1953. Several representatives of the Company appeared with him and a committee of the International represented the Union. Discussion centered around change of the old Bureau of Labor Statistics Index to the new Index and change in the pension plan, i.e., the amount of money which the Company would pay to the

workers which arose out of the Government raising the maximum from $80.00 to $85.00. Mr. Dunham stated that the Company's position was that the contract was for five years and it provided for changes of that character and therefore the Company did not see fit to make any change or discuss it. He stated the position of the Union through its spokesman, Mr. Bannon:

> "We realize we have a contract with you and we know what is in the contract, but we want you to know that within the confines of that contract that we can cause you plenty of trouble and, if necessary, I'll see to it that we do."

At the same hearing before the Referee on the above date Donald E. Scriven, Manager of Hourly Personnel and Labor Relations Department of the Company, testified that he had a discussion with Mr. Bannon on December 16, 1952, in an airplane enroute from Buffalo to Detroit. This discussion followed a negotiating committee meeting growing out of certain grievances in the Buffalo Plant. Among other things the discussion referred to a letter which Mr. Bannon had sent to the Company on or about December 3, 1952. We quote his testimony as follows:

> "He stated that he had notified the company in a letter of December 3 that he was instructing the local unions dealing with the Ford Motor Company to harass management within the contractual limitations, the legal limitations of our contract, and that it was undoubtedly in response to that letter to the Long Beach plant that we were experiencing the difficulty in Long Beach.
>
> * * *
>
> "He then stated that he was not interested in shutting down one or two or three assembly plants, inasmuch as that would result only in the discontinu-

ance of operations at that specific location; that he was more interested in closing down a manufacturing plant, and he specifically mentioned Canton or Monroe, inasmuch as the closing of those plants would result in the shutdown of the entire Ford Motor Company, including all of the assembly plants."

The hearing on March 17, 1954, was taken up entirely with the testimony of Kenneth Bannon, Director of the National Ford Department, U.A.W.-C.I.O. His testimony occupies 149 pages of the transcript. With reference to the testimony given by the witness Donald Scriven, and with particular reference to the conversation on the trip from Buffalo to Detroit, Mr. Bannon testified as follows:

"Q. In testimony in these proceedings on January 28, Mr. Donald Scriven of the Ford Motor Company testified concerning a discussion which he alleges he had with you on December 16, 1952 in an airplane. Do you recall that discussion?

A. Yes, I do. I talked with Mr. Scriven returning from negotiations involving a health and safety dispute in the Buffalo assembly plant.

Q. Mr. Scriven alleged in his testimony that you made some reference to the Canton, Ohio plant in that conversation. Do you recall the circumstances of your discussion?

A. I recall talking to Mr. Scriven, as I stated here, but I am certain that I made no mention of the Canton plant to Mr. Scriven. There was no reason for mentioning the Canton plant.

Q. Mr. Scriven alleged on page 44 of that transcript that you stated that you were not interested in shutting down one or two or three

assembly plants, but were more interested in closing down a manufacturing plant, and that you specifically mentioned Canton or Monroe. Will you state your recollection on that matter.

A. Yes. The purpose for sitting with Mr. Scriven and talking with him was to try to avoid a strike situation in the Buffalo assembly plant. We had discussed the health and safety problems at that plant and further meetings were to be set up. As a matter of fact, Mr. Scriven called me at my home subsequent to the plane trip that he mentions here. Oddly enough, in the agreement that was put together with regard to the Buffalo dispute, there was language in there that would completely contradict what Mr. Scriven said here."

With reference to the testimony of the above named witnesses that the Union deemed it necessary to create a "crisis" in order to bargain successfully with the Company, Mr. Bannon testified as follows:

> "You will find as time went on that more and more letters were sent in to Mr. Bugas on these crises that did occur out in those different shops. The term became rather general in Ford that what we really had was crisis bargaining, and what we complained about as one of the issues in our May 24 meeting with Mr. Ford and Mr. Breech and other executives of the Ford Motor Company was that this decentralization program of Ford Motor Company with respect to labor relations problems created crises, and we thought that the thing should revert back, or something should be done whereby we could have Mr. Bugas' office having more say in the problems out in the field."

With reference to the modification of the existing contract and the demands which the Union had made in re-

spect thereof, Mr. Bannon summarized the various discussions which he had had with the Company with reference to the changes sought as follows:

> "Mr. Cummings and I had many meetings, and in some of the meetings—and I imagine in these meetings mentioned here—we discussed two issues. We discussed the general problems applying to all Ford plants that was contained in my letter of December 3, first brought to the attention of Ford Motor Company in our meeting of September 30 and October 1. When I am talking about the general problem, I am referring to the transition agreement from the old index to the new index, something that had to be done, because after all the Ford agreement does provide or did provide, rather, that our cost of living clause was operative only so long as the old index was available. At the point that the old index was to be discontinued or was discontinued, which initially was for the adjustment that would be due March 1, the first pay period in March of 1953, why, in the absence of a transition agreement, we couldn't in fact be working without an escalator clause in our contract, without a whole contract.
>
> "We talked about the pension agreement. We talked about the escalator clause itself, the moneys that were part of it and the general economic problem that again I say we brought to the attention of Ford Motor Company as far back as September 30 and October 1."

From the foregoing testimony above quoted and much other testimony pointing in the same direction, together with the numerous exhibits, including the correspondence between the Union and the Company, there is no doubt that the Union was insisting upon changes for the betterment of all Ford employees in all plants.

Decision of Appeal Board

Based upon the testimony above quoted and the entire record, we find that because of the negotiations arising out of grievances and demands made by the International Union not only in the Canton Plant but in other units as well and on behalf of its entire membership, resulting in a general modification of the 1950 contract, namely the supplemental contract of May 25, 1953, the claimants herein were benefited thereby, and as a result thereof were directly interested within the meaning of the Act, and that the claimants are disqualified from receiving benefits for the weeks in question.

The Decision of the Referee is hereby affirmed.

Calvin N. Smith, Chairman
Duane H. Mosier, Member

Dissenting Opinion, Appeal Board

CHARLES E. LOUGHEED, MEMBER (DISSENTING):

I cannot agree with the majority that claimants here shall be disqualified under Section 29(1)(b). This unprecedented decision marks the first occasion on which it ever has been held in Michigan that claimants shall be disqualified because of a labor dispute which occurred in another state. There is no basis in court decisions for such a ruling. The nearest guidance in the form of court decisions on this issue would be the guidance furnished us by several decisions in the previous Ford labor dispute which caused unemployment in plants in states other than the plant in which the dispute occurred. In that instance, all but one state supreme court held that there was no disqualification. The one state which held for disqualification, Georgia, is not a state whose views, reasoning, or law should be applied to the State of Michigan.

Dissenting Opinion, Appeal Board

There can be disagreement as a matter of legal interpretation as to the meaning of the word "establishment" in connection with the argument as to whether or not the Ford Motor Company is one "establishment" crossing state lines. But regardless of one's view on this legal issue, I certainly cannot understand a finding of fact that claimants who were laid off through no fault of their own in the Michigan plants were within the meaning of the Act, "directly interested" in the Canton labor dispute. This finding is contrary to the evidence.

The last time we had a Ford strike case before us, it was clear that a dispute over the speed of assembly lines in the Rouge plant could be argued to be of direct interest to the claimants in the Iron Mountain plant of the same company. Yet, in that case we refused to find that there was "direct interest" and the Circuit Court to which the case was appealed upheld our view. See *Walter Ormiston et al vs Appeal Board.* There Circuit Judge Jackson pointed out that "the Appeal Board has relied upon (b) (4)". He agreed with this holding, saying:

> "I cannot find, as a matter of law, that the appellants were directly interested under (b)(2)".

I cannot understand the majority here finding "direct interest", in a case where there is no such evidence of direct interest as there was in Ormiston.

The Commission in the instant case disqualified claimants only under Section 29 (1)(b)(4) since it recognized that they had no "direct interest" in the Canton dispute.

The majority has totally ignored the actual cause of the change in the National Agreement between Ford Motor Company and the International Union, UAW-CIO, despite the fact that both the record, and general knowledge, with-

out question establishes that the change in the Ford National Agreement May 25, 1953, was caused by the change in the National GM Agreement three days earlier. The majority has quoted the company spokesman, Mr. Cummins, in support of other points, but failed to quote the following:

> "Q. When you say the facts speak for themselves, are you referring to the fact that General Motors entered into an agreement with the UAW on May 22, that you entered into an agreement on May 25, Chrysler entered into an agreement on May 27, and then General Motors entered into one May 28. Those are the facts you are talking about?
>
> "A. (Cummins) I think that is right. I did not participate in the Chrysler and General Motors negotiations." (Jan. 25: page 131)

The majority fail to make any reference to the extensive, detailed and unchallenged testimony of union witness O'Rourke, which spells out the local nature of the issues in the Canton strike. A mere reading of the Canton agreement makes it clear that the issues in dispute at Canton were local issues. A reading of the May 25 Ford National Agreement in comparison with the GM and Chrysler agreements makes it clear that the occasion for the change in the Ford National Agreement was the change in the GM agreement immediately prior to that time.

To summarize, the unemployment of these Michigan claimants may have been caused by the strike at the Canton plant, but that dispute at the Canton plant clearly had as its subject matter only local issues which did not involve the Michigan claimants. The agreement which settled that Canton strike (Exhibit 6), signed by the company as well as the local union says:

Dissenting Opinion, Appeal Board

> "It is mutually agreed between the proper representatives of the Ford Motor Company and Local 542 of the UAW-CIO that the following constitutes a full and complete settlement of the dispute of April 20, 1953".

I accept as governing this statement by both company and union made at the time rather than for purposes of argument later in an unemployment compensation case.

Obviously these claimants along with all other Ford workers did receive benefits in which they were directly interested as the result of the modification of the National Agreement (Exhibit 83) on May 25, 1953. But this National Agreement was modified without a stoppage of work because of a labor dispute as its cause. The cause of this National Agreement being modified May 25 was the yielding of the biggest of the "Big Three" in the auto industry on May 22 to demands made on all of the Big Three. GM set the pattern in 1953 and Ford followed suit, just as it is apparent at the present time that in 1955 when one of the companies sets the pattern the other companies no doubt will follow suit. This has been the history in the industry over the years and this is what the record in this case shows occurred in 1953.

I therefore dissent from the majority opinion on the application of Section 29(1)(b) to these claimants on two grounds:

1. I do not believe, as a matter of law, that these claimants were unemployed due to a stoppage of work existing because of a labor dispute in the establishment in which they were last employed. I do not believe the word "establishment" refers to the Ford Motor Company on a national or international basis. I believe that a dispute

in a plant in Ohio does not involve claimants in Michigan plants in such dispute as a matter of law.

2. I am firmly convinced that the record shows there is no evidence on which to base a finding of fact that these claimants laid off in the Michigan plants were "directly interested" in the labor dispute which occurred in the Canton, Ohio, plant of the Company. Such a holding of direct interest is not only contrary to the great weight of the evidence but contrary to any evidence in the record.

State of Michigan }
County of Wayne } ss.

Charles E. Lougheed
Charles E. Lougheed, Member

I, D. A. Kusch, Executive Secretary of the Appeal Board of the Michigan Employment Security Commission, do hereby certify that the above and foregoing is a true and correct copy of the Decision of the Appeal Board entered in the above entitled matter on: April 5, 1955.

D. A. Kusch
Executive Secretary, Appeal Board

Portion of Ford Motor Company's Brief in State Supreme Court Dealing with Federal Questions

THE COMMERCE, EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FEDERAL CONSTITUTION PRECLUDE APPELLANTS' CONTENTION THAT "ESTABLISHMENT" SHOULD BE INTERPRETED AS "PLANT" OR "PREMISES".

The Michigan Employment Security Act is not an isolated state statute but is rather a part of a Federal-State system for providing unemployment compensation benefits. The Michigan statute, enacted in 1936, followed the passage of Federal laws known as the Social Security Act (49 Stat. 620) and the Wagner-Peyser Act (48 Stat. 113), which together provided for a national employment system. Section 12 (MSA § 17.512) of the Michigan Employment Security Act expressly accepts the conditions of the Wagner-Peyser Act, as amended, in order that the State of Michigan might qualify for the tax offset provided in the Social Security Act. Both the Michigan Act and the Federal regulations contemplate that in the administration of the statute the State Commission shall consider out-of-state facts and assume responsibility in the administration of the state system so as to coordinate with the national scheme.*

---

*The Workmen's compensation case discussed at pages 54-57 of Appellants' [Dorsey] brief, *Wagner* v. *LaSalle Foundry Company*, 345 Mich. 185 (1956) points up the fact that the Michigan Employment Security Commission not only may, but must, consider out-of-state facts in the administration of the Act. In reaching the conclusion in the *Wagner* case that the Michigan Workmen's Compensation Act was not applicable to an Ohio employer for whom the compensation claimant previously had worked in Ohio, the Michigan Supreme Court was required to consider pertinent events that had occurred in Ohio. Similarly, in the case at bar, the Commission, Referee and Appeal Board were required to, and did, give effect to occurrences in Ohio that were pertinent and necessary to a decision as to whether the claimants' unemployment was due to involvement in a labor dispute within the meaning of the Michigan Employment Security Act.

Portion of Ford Motor Company's Brief in State Supreme Court Dealing with Federal Questions

Federal regulations under the national legislation accepted by the Michigan Act further illustrates the national character of this legislation. The supplement to 20 CFR 602.2(c) states that each state agency shall cooperate with the United States Employment Service in the interstate recruitment and transfer of workers. Section 603.4 provides that each state shall submit a statement that it will comply with and carry out the regulations prescribed under the Wagner-Peyser Act providing for a "National System of Public Employment Offices." Section 20 CFR 602.2(d) provides that the state agency shall establish and maintain adequate arrangements and procedures to assure that workers and employers have full access to job opportunities and the available labor supply within the area (any single labor market area covering parts of two or more states) "*without regard to state boundaries*" (emphasis added).

The Michigan social security tax is levied in respect of the privilege of employment without regard to whether the service is in commerce. The state is enabled to levy such a tax by reason of Federal permission granted by an Act of Congress (53 Stat. 1391, now 26 U. S. C. § 3305), which provides as follows:

> "No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce."

The Michigan Act, by its terms, extends to the full reach of the foregoing federal permit. It expressly covers

services in interstate commerce. Section 42 of the Act provides in part:

> "(1) * * * 'employment' means service, including service in interstate commerce, * * *
>
> "(2) the term 'employment' shall include an individual's *entire* service, performed within or both within and without this state if:
>
> (a) the service is localized in this state; or
>
> (b) the service is not localized in any state but some of the service [is] performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled is in this state; or (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state."

The Michigan tax is a tax on the privilege of employment of a service in interstate commerce whenever the employer is engaged in interstate commerce.

Under sections 19 and 20 of the Act, the ultimate cost to the employer is related to the employer's own benefit payment experience under the provisions of the Act as administered by officials of the State of Michigan. Disqualification of claimants under the labor dispute provision of section 29(1)(b) of the Act affects the benefit payment experience of the employer involved. In order, therefore, that the tax so imposed shall not discriminate against interstate commerce, and thus shall not constitute a burden upon such commerce, *the word "establishment" in the labor dispute section must receive an interpretation which will bring*

the protection of its provisions reasonably within the reach of every interstate employer subject to the tax.

"Employing unit", as defined in section 40 of the Act, means any "type of organization", whether domestic or foreign, having in its employ one or more individuals performing "services for it within this state". The express reach of the Act therefore includes many employers whose headquarters and primary operations are wholly without the state. This is emphasized by section 11(f) of the Act, which provides for service of process upon the Michigan Secretary of State in respect of "any employing unit which is not a resident of this state and which exercises the privilege of having 1 or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state * * *". This provision is calculated to reach employers who have neither plant nor premises or place of employment within the state.

In view of the above-mentioned Federal Enabling Act, a comparable provision in the State of Washington Unemployment Compensation Act was sustained in *International Shoe Co.* v. *State of Washington*, 326 U. S. 310 (1945). A foreign corporation which merely employed salesmen to solicit orders from prospective buyers within the state, to be accepted or rejected by the corporation outside the state, was held to be within the Act. The Michigan Employment Security Act has similarly been applied. Thus, in MUCC—203 Rulings of General Counsel 1347 (1937), there appears the following ruling:

> "Lumberjacks of Wisconsin operating in Michigan Woods are in 'employment' in this state.
>
> "A Paper Mill Company, which has its offices in Wisconsin but whose workmen cross the state

line to the Michigan woods for their logging work, returning to the Wisconsin camp for food and lodging at night, is an 'employer' and required to make contribution payments into the Michigan Unemployment Compensation Fund, for the labor is being performed on Michigan soil."

MUCC 279, Ruling of General Counsel 1580 (1-7-38), is to the following effect:

"Localized service though controlled extra-territorially held in Michigan employment.

"Services localized in Michigan, though controlled from Ohio, are in Michigan employment; the fact that the individual may be transferred to another state is immaterial.

"X Company is a foreign corporation. The salesman for the Company spends the greater portion of his time in Michigan; but his operations are controlled from Ohio."

Mich. UCC 283, Ruling of General Counsel 1531a (12-16-37), contains the following:

"The two employees involved travel entirely within the State of Michigan and sell coal for the employer who is located in Ohio. The activities of these men are directed from the Ohio office, and the Ohio employer was desirous of having the men covered by the Ohio Unemployment Compensation Act. * * *

"It is held that the two employees in question are covered by the Michigan act and X Company is required to make contribution to the Michigan Unemployment Fund on the wages paid to them in accordance with the relevant provisions of the Michigan act."

Portion of Ford Motor Company's Brief in State Supreme Court Dealing with Federal Questions

It is perfectly plain from the foregoing opinions of the Commission's General Counsel that the Michigan Act is applied to employers having neither a plant nor any premises or place of employment within the State of Michigan.* Ownership of a plant or place of employment within the state bears no reasonable relation whatever either to the incident of the tax or the basis of disqualification under paragraph (b) of Section 29(1) of the Act. The tax is imposed solely upon the privilege of employment, without regard to whether or not employment is at a plant within the state. To require employers to possess a plant, or place or premise of employment within the state, *in order to benefit under the labor dispute provisions of paragraph (b)*, therefore, would discriminate against interstate commerce and place a burden upon commerce in violation of the Commerce Clause of the Federal Constitution.

Interpretation of the word "establishment" as limited to "plant" or premise or place of employment within the State of Michigan, as contended by appellants, not only would offend the Commerce clause of the Federal Constitution, but the Equal Protection and Due Process clauses as well.

It is no answer to assert that the statute, given the interpretation urged by the appellants upon the Court, would apply alike to local and interstate employers without discrimination. The practical operation of such an interpretation would be to withhold from an interstate employer (having no plant within the state) the same protection for his share in the Unemployment Compensation Fund which

---

*As shown in Exhibit 120 (p. 1244b), Ford Motor Company itself has paid in respect of employees of its International Division and of its Ford Export Operations having payroll locations outside of Michigan, viz., in New York and New Jersey.

the labor dispute provision of the statute would accord to a local employer having his plant within the state.

In *Bethlehem Motors Co.* v. *Flynt*, 256 U. S. 421 (1921), the Supreme Court rejected an argument by the Attorney General of the State of North Carolina that the tax there in question was "as applicable to resident manufacturers" as to "non-resident manufacturers" and, inferentially "that its condition can be performed as easily by one as by the other, and discriminates against neither." The Court said (at 426):

> "To this we cannot assent. The condition can be satisfied by a resident manufacturer, his factory and its products in the first instance being within the State; it cannot be satisfied by a non-resident manufacturer, his factory necessarily being in another State, some of its products only at a given time being within the State. Therefore, there is a real discrimination, and an offense against the Fourteenth Amendment, * * *."

In *Nippert* v. *Richmond*, 327 U. S. 416 (1946), the Court said (at 432):

> "* * * the tax is highly variable in its incidence and effects with reference to the manner in which one organizes his business and especially in respect to its location and spread in relation to state lines. It was exactly these variations, when they bear with undue burden upon commerce that crosses state lines, which the commerce clause was intended to prevent."

Portion of Ford Motor Company's Brief in State Supreme Court Dealing with Federal Questions

THE COMMERCE, EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FEDERAL CONSTITUTION PRECLUDE APPELLANTS' CONTENTION THAT THE "ESTABLISHMENT" AND "LABOR DISPUTE" BE WHOLLY WITHIN THE STATE.

As above demonstrated, the term "establishment", for Constitutional reasons, must refer to an organizational concept (as distinguished from a plant or street address), such as that developed in the *Chrysler* case. The scope of such an establishment is dependent upon the actual functional organization of the employer's operation, which has no necessary relation to state lines.

"Labor dispute" is likewise conceptual in nature and is not related to state lines.

The disqualification provision in the Michigan Act may not be constitutionally construed in its application to an organization or labor dispute extending across state lines so as to result in a greater tax with respect to the privilege of employment in the State of Michigan than would be imposed if the organization or labor dispute were wholly within the State.

In *Pacific Co.* v. *Johnson,* 285 U. S. 480 (1932), Justice Stone said (at 493):

> "* * * State taxes which, if non-discriminatory, would be upheld, even though they reach or affect those engaged in interstate commerce, are condemned if they discriminate against those so engaged, by placing on them heavier burdens than those imposed on others within the state. * * *"

In *Memphis Steam Laundry* v. *Stone,* 342 U. S. 389 (1952), Chief Justice Vinson said (at 395):

> "* * * The Commerce Clause created the nation-wide area of free trade essential to this country's

> economic welfare by removing state lines as impediments to intercourse between the states. The tax imposed in this case made the Mississippi state line into a local obstruction to the flow of interstate commerce that cannot stand under the Commerce Clause."

Whether the practical operation of the statute meets the Constitutional test under the Commerce Clause is a question for the Supreme Court. As Justice Reed pointed out in *Best & Co.* v. *Maxwell,* 311 U. S. 454 (1940) (at 455-6):

> "The commerce clause forbids discrimination whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce. This standard we think condemns the tax at bar. * * *"

(at 457):

> "The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, the actual effect of which is to discriminate in favor of intrastate businesses, whatever may be the ostensible reach of the language."

Thus, if the interpretation of the term "establishment" urged by the Appellants were to be adopted, a serious question would arise as to the constitutional validity of the Michigan Employment Security Act, particularly with respect to those provisions which purport to levy a tax upon interstate employers whose integrated operations extend beyond the boundaries of the State of Michigan.

It is axiomatic that courts adopt that interpretation of the statute which will avoid raising questions as to its constitutionality.

STATE OF MICHIGAN

IN THE

SUPREME COURT

[Captions Omitted]

Application of Ford Motor Company, Defendant and Appellee, for Rehearing

Now comes Ford Motor Company, defendant and appellee, and makes application to this Honorable Court for a rehearing in said causes for the following reasons:

The Referee, the Appeal Board and the Circuit Court of Wayne County found that the claimants were in fact directly involved in the labor dispute causing their unemployment. The claimants accordingly were held to be disqualified for benefits under Section 29 of the Michigan Employment Security Act for the reason that their unemployment was due to a stoppage of work, existing because of a labor dispute, in the establishment in which they were employed. No other decision was possible under the wording of the statute as interpreted by the Supreme Court of Michigan in *Chrysler Corporation v. Smith*, 297 Mich. 438 (1941); and in *Chrysler Corporation v. Appeal Board of Michigan Unemployment Compensation Commission*, 301 Mich. 351 (1942).

The claimants appealed to this Court, contending that the doctrine of the *Chrysler* cases should be overruled and that the statute should be construed so as to award them unemployment compensation.

In its brief, the appellee, Ford Motor Company, argued (Br. p. 26) that this Court should adhere to the interpretation of "labor dispute" and "establishment" as laid down in the *Chrysler* cases. Appellee pointed out (Br. pp. 77-84)

that failure of the Court to follow its precedents in this connection would not only render the statute unconstitutional as effecting a discriminatory burden upon interstate commerce, but would also deny appellee equal protection of the laws, and deprive it of due process of law under the Federal Constitution.

This Court, in its opinion filed January 12, 1959, overruled its long-standing precedents in the *Chrysler* cases. The majority held, as a matter of law, that the disqualification provision of the statute did not become operative because (1) appellee operated an integrated enterprise consisting of several manufacturing plants, as distinguished from a single place of business within the State, and (2) the strike occurred at the appellee's plant in Canton, Ohio, whereas there was no strike, and therefore no labor dispute, at the appellee's plants in Michigan where the claimants were employed.

There was thus drawn into question the validity of a state statute under the Constitution of the United States, the decision of this Court being in favor of validity.

Under the rules of this Court, appellee hereby applies for a rehearing of that decision and respectfully urges this Court to reconsider the questions arising under the State and Federal constitutions in the light of the considerations hereinafter set forth, and to affirm the decision below. Such affirmance would permit adherence to the precedents which give to the statute an interpretation not only consistent with constitutional requirements, but also consistent with all provisions of the statute.

The evident purpose of the Michigan statute is to provide unemployment compensation benefits only where unemployment is involuntary, and to deny benefits where the claimant is "directly involved" in the labor dispute

which has caused the stoppage of work resulting in his unemployment. Disqualification for direct involvement in such a labor dispute is necessary to prevent perversive use of the unemployment benefit statute as a vehicle for financing—at the employer's expense—the very labor dispute which has caused the unemployment.

The first sentence of section 29(1)(b) provides that an individual shall be disqualified for benefits:

> "For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute."

The conduct or circumstances constituting direct involvement by an employee in a labor dispute, so as to disqualify him for benefits, are set forth in subsections (1) through (4).

The cost of unemployment compensation benefits is taxed to employers on the basis of their respective employment within the State. But the rate of tax for each individual employer is adjusted with reference to his own unemployment experience in that the larger the amount of the unemployment compensation payments, made from the State Fund with respect to his enterprise within the State, the higher the rate of his tax. The employer's rate of tax is not increased, however, by reason of unemployment due to a stoppage of work, existing because of a labor dispute, if the claimants receive no unemployment compensation because of disqualification under Section 29(1)(b) of the statute.

For over seventeen years, the disqualification section, as interpreted in the *Chrysler* cases, has applied equally

and without discrimination whether the employer operated at a single location or whether his integrated operations were in multiple plants at different locations.

The Court, however, has now overruled the *Chrysler* precedents and held that, as a matter of law, functionally integrated plants located at different places in Michigan and in other states do not constitute a single "establishment." This means that an employer, operating integrated multiple plants, would not be entitled to the same tax treatment under the labor dispute disqualification section in the adjustment of his unemployment compensation tax rate as would an employer operating a single plant.

So construed, the statute would arbitrarily distinguish, on the one hand, between an employer whose operations are wholly within a single plant and, on the other hand, an employer whose functionally integrated operations are in multiple plants located in Michigan and other states.

We respectfully submit that the attempted distinction does not rest upon any difference bearing a reasonable and just relation to the objective of the statute involved.

I. AS CONSTRUED BY THE COURT, THE STATUTE IS INVALID UNDER BOTH THE STATE AND FEDERAL CONSTITUTIONS.

A. So construed, the statute violates the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution and the Due Process Clause in Article II of Section 16 of the Constitution of the State of Michigan.

Subsections (1) through (4) of the labor dispute disqualification section define the conduct or circumstances constituting direct involvement by a claimant in a labor dispute. Thus, subsections (1) and (3) cover direct in-

volvement by voluntary stoppage of work; subsection (2) covers direct involvement by "participating" in, or "financing," or being "directly interested" in the labor dispute which caused the stoppage of work; and subsection (4) covers the situation where the stoppage of work is due to a labor dispute in some department or unit other than the one in which the claimant is employed.

As construed by the Court, however, the basic disqualification under the statute turns not upon direct involvement in fact (as provided in subsections (1) through (4)), but rather is made to depend upon the location of the employer's integrated operations. The Court said:

> "* * * the basic disqualification finding required in the first sentence of section 29(1)(b) must be legally made before the proviso relating to 'direct involvement' becomes effective, and before *considering* or *applying* the tests of direct involvement set forth in subsections (1), (2), (3) and (4)." (italics ours.)

Accordingly, under the Court's construction, unless the employer's situation falls within the Court's new concept of "a labor dispute in the establishment," a claimant is *not* disqualified regardless of his actual direct involvement in fact in the labor dispute which caused his own unemployment. In this posture, the fact of direct involvement becomes irrelevant where the employer's functionally integrated plants are located in Michigan and other states, and hence do not constitute a single "establishment" within the statute as construed. The Court said:

> "Thus, we hold that the direct interest finding of the appeal board under subsection (2) of section 29(1)(b), even if supported by the great weight of the evidence, does not, standing alone, occasion disqualification."

This holding results in arbitrary discrimination between employers, based upon a difference having no relation to the objective of the statute. Thus, an employer whose enterprise is comprised of two or more functionally integrated units at a single location is not subjected to an increase in his tax rate. This is so even where unemployment in one unit is caused by a stoppage of work due to a labor dispute in another unit, and even where claimants are directly involved in fact in such labor dispute.

But a multi-plant employer, under identical circumstances, is subjected to a tax increase stemming from the payment of unemployment compensation benefits, even though the only difference between the two enterprises is that his functionally integrated units are in different locations, whether in the same state or in other states.

The distinction thus made between functionally integrated operations at one location, and functionally integrated operations at different locations, have no reasonable bearing upon the basic question posed by the statute, namely, whether a particular claimant's unemployment was due to a stoppage of work existing because of a labor dispute in which he was directly involved. Obviously, direct involvement in fact should turn upon the employee's individual conduct or situation rather than upon the fortuitous location of his employer's operations.

Therefore, the attempted classification between operations at a single location, and operations at different locations, is arbitrary and results in denial of equal protection of the laws under the Federal Constitution and of due process of law under the Constitution of the State of Michigan.

In *Hartford Steam Boiler Inspection & Insurance Company v. Harrison,* 301 U. S. 459 (1937), there was a statutory discrimination between mutual and stock in-

surance companies writing insurance within the State of Georgia. The statute permitted mutual companies to act through agents who were salaried employees but forbade stock companies from doing so. It was held invalid as repugnant to the equal protection clause of the Federal Constitution. In reversing a judgment of the Supreme Court of Georgia sustaining the statute, the Supreme Court of the United States pointed out that, while there were indeed differences between stock and mutual insurance companies, nevertheless the discrimination made did not rest on any difference having a reasonable and just relation to the objective of the statute. The Court said (pp. 462-463):

> "* * * *mere* difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis' * * *. Discriminations are not to be supported by mere fanciful conjecture. * * * They cannot stand as reasonable if they offend the plain standards of common sense. * * *"
>
> "It is idle to elaborate the differences between mutual and stock companies. These are manifest and admitted. But the statutory discrimination has no reasonable relation to these differences. We can discover no reasonable basis for permitting mutual insurance companies to act through salaried resident employees and exclude stock companies from the same privilege. * * *"

The principle of the *Hartford* case was applied recently in *Morey v. Doud,* 354 U. S 457 (1957), where a statute required all firms selling or issuing money orders in the state to secure a license, but specifically excepted the American Express Company. In holding that the statute denied equal protection of the laws to a retail druggist proposing

to sell money orders to be issued by another firm, the Court said (p. 466):

> "Of course, distinctions in the treatment of business entities engaged in the same business activity may be justified by genuinely different characteristics of the business involved. * * * But distinctions cannot be so justified if the 'discrimination has no reasonable relation to these differences.' *Hartford S. B. I. & Inc. Co. v. Harrison*, 301 U. S. 459, 463 * * *."

Decisions under the due process clause of the Michigan Constitution are in accord. Thus, in *Sullivan v. Graham*, 336 Mich. 65 (1953), it was held that a statute providing for the licensing of residential builders, but specifically exempting any work or operation by a bank or trust company on any property owned by it, was invalid as violating not only the equal protection clause of the Federal Constitution, but also the due process clauses of both the Federal and Michigan State constitutions.

B. As construed, the statute is invalid under the Federal Constitution as imposing an undue burden on interstate commerce.

The discrimination made in this case (i.e., between (1) a single "establishment" at one location, and (2) functionally integrated operations in plants located in Michigan (and other states) not only results in denial of equal protection of laws and due process in respect of functionally integrated operations at different locations *within* the State of Michigan, but also imposes an undue burden upon interstate commerce. This results from the fact that an employer, with functionally integrated plants located in several states, is excluded from equal treatment in the determination of his

unemployment compensation tax, where the stoppage of work in his Michigan plant is due to a labor dispute in his plant outside the state. This is true even though the Michigan claimants are directly involved in the dispute. To come within the arbitrary classification, such an employer presumably would be obliged to confine his functionally integrated operations to a single-plant location within the state. Such discrimination is violative of the commerce clause of the Federal Constitution.

In *Dean Milk Company v. City of Madison, Wisconsin*, 340 U. S. 349 (1951), on appeal from the Supreme Court of Wisconsin, the Supreme Court of the United States held invalid a municipal milk ordinance which prohibited sale of pasteurized milk unless it had been processed and bottled at an approved plant within a radius of five miles from the city of Madison. In an action by a distributor of milk gathered from both Wisconsin and Illinois, but pasteurized in Illinois at places sixty-five and eighty-five miles from Madison, the Supreme Court of Wisconsin held that there was no violation either of the Fourteenth Amendment or of the commerce clause of the Federal Constitution. The Court said (*Dean Milk Co. v. City of Madison*, 257 Wis. 308, 43 N. W. 2d 480, 483):

> "* * * The five-mile limitation as to pasteurization plants is reasonable as applied to this plaintiff. It has no pasteurization plant within any reasonable distance of Madison. This provision of the ordinance was not adopted to exclude plaintiff, nor does it discriminate against it."

In reversing, the Supreme Court of the United States held that the ordinance imposed an undue burden on interstate commerce. Obviously, whether the pasteurizing plant was located within five miles from the city bore no relation.

the Court held, to the wholesomeness of the milk pasteurized by appellant in Illinois. The effect of the ordinance was to exclude wholesome milk pasteurized in Illinois. For a similar ruling, see the opinion of Attorney General of the State of Michigan, Foss O. Eldred, November 6, 1946, No. 0-5105.

The foregoing principle applies to a burden upon commerce arising from inequality in taxation as well as from exclusion of a product from commerce. In *West Point Wholesale Grocery Co. v. Opelika*, 354 U. S. 390 (1957), on appeal from the Court of Appeals of Alabama, the Supreme Court of the United States held invalid under the commerce clause a municipal ordinance which required an annual privilege tax of $250 to be paid by each firm engaged in the business of distributing at wholesale within the city groceries originating from points outside the city.

The state Court sustained the ordinance as not violative of either the Fourteenth Amendment or the commerce clause of the Federal Constitution. The Court said (87 So. 2d 661, 667):

> "The ordinance applies equally to deliveries of wholesale groceries in the City of Opelika, regardless of whether the transportation began within or without the State, therefore, defendant's contention that it differentiates between intrastate and interstate commerce is without merit. * * * The basis of classification is a reasonable one and applies equally to all within the class, * * *."

In reversing, the Supreme Court of the United States pointed out that the Opelika ordinance was discriminatory in that local wholesalers whose deliveries originated within the city were taxed on the basis of gross receipts, whereas those who had no local places of business and whose deliv-

eries originated outside the city were required to pay a flat annual fee of $250. The amount of the tax imposed on those dealing with deliveries originating outside the city thus bore no reasonable relation to either the volume of business done or to the returns from it. The tax therefore discriminated against those making such deliveries from shipments originating within the state (but outside the city) in the same manner as it discriminated against those engaged in making deliveries from interstate shipments. Nevertheless, such discrimination against one engaged in interstate commerce was held to be an unconstitutional burden upon interstate commerce. The Court said (354 U. S. at 392):

> "* * * The commerce clause forbids any such discrimination against the free flow of trade over state boundaries."

II. THE CONSTRUCTION ADOPTED BY THE COURT IS UNNECESSARY, ARBITRARY, AND DEFEATS THE EVIDENT PURPOSE OF THE DISQUALIFICATION PROVISION.

The first sentence of section 29(1)(b) provides disqualification of a claimant:

> "For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. * * *"

The discriminatory application of the statute in this case arises from a construction involving three steps: first, that the "labor dispute" must be in the "establishment" in which the claimant is employed; second, that such "labor

dispute" must be in effect be limited to a "strike"; and, third, that "establishment" must be limited to a single localized place of operation. To reach the discriminatory result, all three constructions must be adopted. None, however, is required by the statute as written.

A. The Section lends itself readily to interpretation avoiding discrimination.

The Section as a whole lends itself readily to the interpretation that the "labor dispute" need not be in the "establishment"; only the stoppage of work is required to be in the "establishment." The words "existing because of a labor dispute" are intended to characterize the nature of the work stoppage, and do not limit the application of the provision to situations where the labor dispute is in the "establishment" where claimant was employed.*

Such meaning is clearly apparent upon a reading of the section as though the words "existing because of a labor dispute" were set off by commas as follows:

> "For any week with respect to which his total or partial unemployment is due to a stoppage of work, existing because of a labor dispute, in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. * * *"

So read, disqualification would turn not upon the location of the employer's plants, but rather upon whether

*This was recognized by Circuit Judge (now Mr. Justice) Edwards in *Elbert E. Murray v. The Appeal Board,* Wayne Circuit No. 276-859, decided January 27, 1955, where he observed that under subsection (3), the claimants "could have brought a labor dispute, previously carried forward by others, into their own establishment by voluntary actions which effectively joined it and made it their own."

claimant was in fact directly involved in the labor dispute causing the stoppage of work in the "establishment" of his employment. As a result, all employers would be treated alike, regardless of whether their operations were single or multiplant in character.

Such an interpretation, not requiring the labor dispute to be in the "establishment," would also render the first sentence of the section consistent with all of the four subsections. Thus, it would be consistent with subsection (3), which expressly applies only where there is *no* labor dispute in the "establishment":

> "That at any time, there being *no* labor dispute *in the establishment* or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, * * *." (italics ours.)

The construction by the Court, however, that the labor dispute must be in the "establishment" before any disqualification can arise, precludes subsection (3), as written, ever from coming into operation. Such construction is contrary to the basic rule recently affirmed in *Melia v. Employment Security Commission,* 346 Mich. 544 (1956), at page 562:

> " 'No rule is better settled than, in construing a statute, effect must be given to every part of it. One part must not be so construed as to render another part nugatory, or of no effect.' * * *"

The Court's construction here, contrary to such rule, is forced and unnatural in that it not only gives rise to an unnecessary unconstitutional discrimination, but also creates an unnecessary inconsistency within the section itself.

Obviously, the construction is not the one intended by the drafters of the section as a whole.

B. The interpretation followed by the Referee, Appeal Board and Circuit Court in this case avoids arbitrary discrimination among employers.

The discrimination resulting from the Court's decision springs from the combined effect of the choice of arbitrary constructions of the terms "labor dispute" and "establishment". Discrimination can be avoided, however, either by giving to "labor dispute" its accepted meaning, or by adherence to the interpretation of "establishment" as inclusive of integrated operations.

(1) *Labor dispute.* The term "labor dispute" has long been well understood to be broader than the term "strike". It includes any controversy concerning hours, wages, or terms or conditions of employment. See, for example, the definitions of "labor dispute" in the Norris-LaGuardia Act (29 U. S. C. A. § 101), and in the National Labor Relations Act (29 U. S. C. A. § 151). Such well understood background for the meaning of the term "labor dispute" may well explain why the legislature saw no need to redefine "labor dispute" for the purposes of the Michigan Employment Security Act.

In any event, there is nothing in the Michigan statute to indicate any departure from the accepted meaning of the term. On the contrary, the term "labor dispute" is used in the first paragraph of the disqualification section (§ 29(1)(a)) in a context which makes clear that "labor dispute" was understood to be a generic term broader than, and inclusive of, the term "strike". It is there provided, in effect, that a claimant shall be deemed voluntarily unemployed, and therefore disqualified, if he shall refuse to accept

work; provided, however, that benefits shall not be denied for refusing to accept work "if the position offered is vacant due directly to a strike, lockout or other labor dispute." (This provision is required to be contained in state legislation in order to comply with the requirements of the Federal Social Security Act.)

But there is no need to determine whether "labor dispute", as used in the Michigan statute, must in all cases be construed as broadly as defined in the Federal act. It is sufficient here to note that, as used in the first paragraph of Section 29, the term "labor dispute" certainly is not limited to, but is broader than "strike," and includes disputes affecting wages, hours, and conditions of claimant's employment. *Chrysler Corp. v. Smith*, 297 Mich. 437, 451-454 (1941); *Unemployment Compensation Commission v. Aragon*, 329 U. S. 143, 149-151 (1946).

Applying this accepted concept, any labor dispute affecting the wages, hours or terms of employment of a claimant is deemed to be in the "establishment" where he is or was last employed, if the work stoppage is due to the labor dispute, regardless of the interpretation given to "establishment" and regardless of where, in the operations of his employer, the cause of the stoppage of the claimant's operations originated.

Instead of so applying the accepted definition of the term "labor dispute," the Court here chose arbitrarily, in effect, to limit the term to "strike"—a construction having no support either in the wording of the statute or in the background of common and statutory labor law, which defines the term as a dispute over conditions of employment.

Having construed "labor dispute" as limited to "strike", the Court stated that Michigan claimants cannot be found "responsible" for the "labor dispute" which caused their unemployment.

But the labor dispute section of the statute does not provide a test of disqualification based upon *responsibility* for a labor dispute. The test set out in Section 29(1)(b) is rather whether a claimant for benefits is "involved" in such labor dispute.

It is one thing to be *responsible* for a dispute, but it is an entirely different concept to be *involved* in it. Thus, even though claimants may not have been responsible for the labor dispute, under the findings of the Appeal Board they were directly involved and therefore properly disqualified.

(2) *Establishment.* The Court places particular reliance upon its quotation of part of the definition of "establishment", contained in Webster's New International Dictionary (2d Ed.), p. 874. But a more complete quotation of the definition, so far as pertinent, shows that establishment may refer to a commercial "organization" rather than to a physical location:

> "2. That which is established; as * * * c A permanent civil, military, or *commercial force* or *organization.* d The place where one is permanently fixed for residence or business; residence, including grounds, furniture, equipage, retinue, etc., with which one is fitted out; *also,* an *institution* or place of business, with its fixture and organized staff, as large establishment; a manufacturing establishment."

The choice between "organization" and "place of business' as alternative meanings for "establishment" must be made with reference to the objective in view.

By selecting the concept of business "organization", the disqualification provided in the Section is allowed to turn upon the claimant's own conduct or other direct involvement in the labor dispute causing the stoppage of work

within the functionally integrated organization of his employment. Accordingly, in *Chrysler Corporation v. Appeal Board of Michigan Unemployment Compensation Commission*, 301 Mich. 351 (1942), it was held that where the operations in various plants are functionally integrated and highly synchronized one with another, so that a slowdown in production in one of the integrated plants causes a stoppage in the other, the two must be deemed to be the same "establishment" within the meaning of the Act, particularly where the slowdown in one operation is aimed at affecting the labor conditions in all other operations integrated with it.

In attempting to distinguish the facts in this case from those in the *Chrysler* and *Spielman* cases, the Court said (p. 14):

> "On the other hand, the record in the cases considered herewith indicates for all plants concerned entirely separate and distinct plant managements and plant production schedules, as well as separate and distinct industrial relations and employment offices, employee seniority lists, local unions, and local labor-management agreements."

The facts are, of course, that the plant managements, the plant production schedules, the industrial relations and employment offices of the appellee are not "separate and distinct". They are interdependent functions and units of a closely-knit, highly-coordinated organization in which the administration of uniform scheduling, employment and other policies and practices is supervised and controlled through central office and divisional staffs. Similarly, although there are local unions and local agreements, the local unions are mere administrative units of the International Union, and the local agreements are merely implementations of the master agreement between the appellee

and the International Union covering such details as local seniority lists and shift preference.

Moreover, the Court's statement ignores the well known facts that the International Union was at all times the exclusive collective bargaining agent for all of the hourly rate production and maintenance employees of the appellee in all of its plants throughout the United States (as recited on page 4 of the Court's Opinion); the master agreement between the International Union and the appellee governed the wages, hours, and other conditions of employment of the claimants, as well as all other employees of appellee represented by the International Union; and that the Canton strike was expressly authorized by the International Union during the course of the labor dispute over the International Union's demands for reopening of the 5-year master agreement in the middle of its term.

In overruling the *Chrysler* decisions and limiting "establishment" to a single place of business, this Court has made irrelevant direct involvement in fact where the employer's functionally integrated operations are not limited to a single location and the work stoppage originates at a location other than the one in which the claimant is employed.

Such choices of meaning for the words "labor dispute" and "establishment" are unnecessary, as we have pointed out, and they lead to an arbitrary result which not only unconstitutionally discriminates against certain classes of employers, but perverts the basic purpose of the statute.

Under the decision of the Court in this case, the International Union, UAW, or any other exclusive collective bargaining agent, may convert the Michigan Employment Security Act into a weapon against the very employers whose contributions made possible payment of the benefits. Thus, the Union is put in a position to force every integrated

employer to finance a stoppage of his entire operations by the simple device of calling a strike at only one of his key operations.

III. THE CONSEQUENCES OF THE COURT'S DECISION ARE FAR-REACHING AND WILL SERIOUSLY AFFECT THE ADMINISTRATION OF THE MICHIGAN UNEMPLOYMENT COMPENSATION LAW IN ALL LABOR DISPUTE MATTERS.

The decision in this case, departing as it does from long established concepts and precedents, but failing to delineate precisely the scope and reach of what remains of the labor dispute disqualification provision, has already caused confusion and uncertainty. Without question, it will cause additional administrative problems and provoke litigation. It has aroused the interest or concern of all parties affected by the Michigan Employment Security Act.

Wherefore, Ford Motor Company respectfully requests that this application for rehearing be granted and that this case be set down on the docket of the next term of this Court for oral argument and that after rehearing and reargument this Court affirm the decision of the Circuit Court.

Respectfully submitted,

WILLIAM T. GOSSETT,
Attorney for Ford Motor Company.

WILLIAM T. GOSSETT,
RICHARD B. DARRAGH,
JOSEPH A. O'REILLY,
RICHARD A. FELLRATH,
Of Counsel.

Dated: January 30, 1959.

STATE OF MICHIGAN

IN THE

SUPREME COURT

[captions omitted]

Objections of Plaintiffs to Application for Rehearing

The unemployment of the claimants here in question occurred in May, 1953.

Ford Motor Company asks rehearing, after receiving the three carefully considered opinions of the Court January 12, 1959, in a case which has been under consideration by the Court ever since oral argument occurred in the April Term of 1958. The 146 page Brief of the Company and the 1,245 page Joint Appendix on appeal were filed in February, 1958. The issues involved herein were under consideration by the Court for almost one year prior to its decision.

Under the circumstances of this case, the classic statement on the subject of rehearing in BROWN, ET AL V. BROWN, ET AL, 64 Mich. 82, is peculiarly apt:

> "There is no reason given which was not given in the argument on the merits, which was very able and exhaustive, and presented every view in favor of complainants that zeal and ingenuity could offer. There was no failure of counsel to do anything that could be done . . .
>
> "It is, however, proper to say, without especial reference to this particular case, that we have heretofore pointed out and explained that a rehearing on the same facts and legal controversy is not properly to be granted, unless there has been some very peculiar assumption or defect on the first hearing, by which Court and parties have been misled. The case must be an extraordinary one in which an appellate Court can properly revoke its decision on any

> other ground. It is to be expected that counsel will always present in one argument what there is to be presented, and the Court will act on the whole record, or so much of it as is material." (82-83)

In the instant case the Court is unanimous in its agreement that CHRYSLER V. SMITH was unsound. The dissent states:

> "Were this a matter of first impression, I should find myself in agreement with Mr. Justice Edwards' interpretation of the word 'establishment' as, also, with that in the dissenting opinion in Chrysler Corporation v. Smith, 297 Mich. 438."

This unanimity occurred after due consideration of the alleged constitutional issues which Ford's Application for Rehearing points out (p. 2) were discussed at pages 77-84 of its original Brief.

The division in the Court occurs only on the issue of the weight to be given stare decisis. Ford advances no new points of fact or law on this subject which could serve as a possible basis for granting rehearing.

We respectfully request that Application for Rehearing be denied.

Respectfully submitted,

/sgd./ "ZWERDLING AND ZWERDLING"

ZWERDLING AND ZWERDLING
Attorneys for Plaintiffs
3426 Cadillac Tower
Detroit 26, Michigan
WOodward 5-5569

A. L. ZWERDLING
Of Counsel

Dated: February 10, 1959.

Order Denying Application For Rehearing

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 19th day of February in the year of our Lord one thousand nine hundred and fifty-nine.

Present the Honorable

JOHN R. DETHMERS,
Chief Justice

LELAND W. CARR
HARRY F. KELLY
TALBOT SMITH
EUGENE F. BLACK
GEORGE EDWARDS
JOHN D. VOELKER
Associate Justices.

ALEXANDER PARK, ET AL., *vs.* MESC APPEAL BOARD, ET AL.	47065
JOHN L. DORSEY, ET AL., *vs.* MESC APPEAL BOARD, ET AL.	47124

A motion for rehearing having been heretofore submitted herein, it is hereby denied, with costs to plaintiffs.

Stay of Remittitur by State Supreme Court

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 26th day of February, in the year of our Lord one thousand nine hundred and fifty-nine.

Present the Honorable
JOHN R. DETHMERS,
Chief Justice
LELAND W. CARR
HARRY F. KELLY
TALBOT SMITH
EUGENE F. BLACK
GEORGE EDWARDS
JOHN D. VOELKER
Associate Justices.

ALEXANDER PARK, *et al.*, *Plaintiffs*, THOMAS M. KAVANAGH, Atty. Gen, *Intervening Plaintiff and Appellant*, *vs.* MESC APPEAL BOARD, *et al.*, *Defendants.*	47065
JOHN L. DORSEY, *et al.*, *Plaintiffs and Appellants*, *vs.* MESC APPEAL BOARD, *et al.*, and FORD MOTOR COMPANY, (*Appellant*), *Defendants.*	47124

In these causes a motion is filed by defendant Ford Motor Company for a stay of remittitur for the period of twenty days during which an appeal may be filed with the Supreme Court of the United States and thereafter until that Court passes upon such appeal, and an answer thereto having been filed by plaintiffs, and due consideration thereof having been had by the Court, it is ordered that the stay as requested be and the same is hereby granted.

Notice of Appeal

[cover page omitted]

STATE OF MICHIGAN

SUPREME COURT

ALEXANDER PARK, *et al.*, *Plaintiffs and Appellees*, THOMAS M. KAVANAGH, Attorney General, *Intervenor and Appellant*, *vs.* THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION, and FORD MOTOR COMPANY, *Defendants and Appellees.*	No. 47,065
JOHN L. DORSEY, *et al.*, *Plaintiffs and Appellants*, *vs.* THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION, and FORD MOTOR COMPANY, *Defendants and Appellees.*	No. 47,124

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that Ford Motor Company, the appellee above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Michigan entered on Janu-

ary 12, 1959, reversing the decision of the Circuit Court of Wayne County, Michigan, and granting unemployment compensation benefits to Alexander Park, et al., and John L. Dorsey, et al.

This appeal is taken pursuant to 28 U. S. C. § 1257(2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) Volumes I, II and III of the Joint Appendix on Appeal.

(b) The decision of the Appeal Board, Appendix A to brief of Intervenor-Appellant in Supreme Court of Michigan, pp. 1a-30a.

(c) Opinion of the Circuit Court of Wayne County, Appendix B to same brief, Id., pp. 31a-88a, including notation of grant of leave to appeal on p. 95a (Appendix E.).

(d) The opinions of the Supreme Court of the State of Michigan and of Dethmers, C. J., dissenting and Black, Jr., concurring.

(e) The order of the Supreme Court of the State of Michigan, June 3, 1957, consolidating the appeals.

(f) The Judgment (order) of the Supreme Court of the State of Michigan reversing the judgment of the Circuit Court.

(g) The application for rehearing filed by Ford Motor Company in the Supreme Court of the State Michigan.

(h) The order of the Supreme Court of the State of Michigan denying said application for rehearing.

Notice of Appeal

(i) The docket entries in the Supreme Court of Michigan.

(j) This Notice of Appeal.

III. The question presented by this appeal is whether the statute involved (Section 29(1)(b) of the Michigan Employment Security Act, Michigan Statutes Annotated § 17.531; C. L. 1948 § 421.29), as construed by the Michigan Supreme Court in these cases, is invalid under the Federal Constitution because:

(1) The classification established by the statute as thus construed is arbitrary and unreasonable and results in discrimination against the employer operating functionally integrated units, geographically separated, by increasing its contribution rate, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution, and

(2) Such increase in the contribution rate imposes an undue burden upon commerce in violation of the Commerce Clause of the Federal Constitution, where the employer operates functionally integrated units at different locations within and without the state, and the work stoppage within the state is caused by a labor dispute in which claimants are directly involved, occurring outside the state.

Respectfully submitted,

WILLIAM T. GOSSETT,
Attorney for Ford Motor Company

WILLIAM T. GOSSETT,
RICHARD B. DARRAGH,
JOSEPH A. O'REILLY,
RICHARD A. FELLRATH,
Of Counsel

Dated: February 26, 1959